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October 17, 1996

The Honorable Lisa Graham Keegan
Superintendent of Public Instruction
1535 West Jefferson Street
Phoenix, Arizona 85007

Re: I96-013 (R96-031)

Dear Superintendent Keegan:

You have asked whether it is legal for the State to pay a charter school for students who are enrolled in the charter school but who are instructed in the student's home by someone who is not employed by the charter school. Pursuant to the controlling statutes relating to charter school financing, we find that the State may legally pay only for the time that students are enrolled in and actually attend the charter school. Except in very limited circumstances, the Legislature has not authorized payment to a school for students who are enrolled at the school but are instructed in their homes.

Background

Charter schools are public schools that are sponsored by a school district governing board, the State Board of Education, or the State Board for Charter Schools. A.R.S. §§ 15-101(3), 15-183(B). As public schools, charter schools may receive State financial support appropriated by the Legislature. A.R.S. § 15-185.

Public financing for charter schools is determined by formulas that are similar, in most respects, to the formulas used for regular school district budget and financial assistance calculations. For example, the State financing formulas provide charter schools with a base support level, a transportation support level, a capital outlay revenue limit, a capital levy revenue limit, and equalization assistance. A.R.S. § 15-185(A), (B). These funds are used to maintain and operate the school as well as for capital improvements.

These formulas depend upon statutory definitions that establish the precise requirements to qualify for funding. In calculating the base support level, capital outlay revenue limit, capital levy revenue limit, and equalization assistance, an accurate "student count" is necessary to compute the State funds payable to the charter school.

Your opinion request presents a hybrid situation in which the student is enrolled in a charter school but, rather than actually attend the charter school, receives only administrative support from the charter school, which may include textbooks, supplies, testing, educational planning, and advice to the student's instructors. Actual attendance is in the student's home with instruction given by the student's parent, guardian, or individual who has custody. The issue before us then is whether the Legislature authorized the State to finance the charter school for students who do not actually attend the charter school.¹

Analysis

The primary rule of statutory construction is to find and give effect to legislative intent. *Mail Boxes v. Industrial Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). To determine legislative intent, we first review the statute's language. *Calmat of Arizona v. State ex rel. Miller*, 176 Ariz. 190, 193, 859 P.2d 1323, 1326 (1993).

The Legislature authorized newly opened charter schools to estimate student count and required that, after the first one hundred days in session, the school must revise its student count to equal either the "actual average daily membership" as defined in A.R.S. § 15-901 or the "adjusted average daily membership" as prescribed in A.R.S. § 15-902. A.R.S. § 15-185(B)(2) (emphasis added). The formulas for student count (on which the bulk of financing for charter schools is based) consistently require *actual attendance* in computing the support paid to the charter school. See, e.g., A.R.S. §§ 15-901(A) and 15-902. To determine the legislative mandate of actual attendance, we look to the school finance definitions and requirements in Title 15, such as "[a]verage daily membership," as defined in A.R.S. § 15-901(A)(2), which reflects the total enrollment at the school minus any withdrawals. Withdrawals include both students formally withdrawn from school and students absent for ten consecutive days. The effective date of withdrawal is retroactive to the last day of "actual attendance" of the student. A.R.S. § 15-901(A)(2) (emphasis added). In the

¹ This opinion does not address payments to schools for students who are instructed primarily in the home but who are also enrolled in and actually attend a public school part time. Because A.R.S. § 15-901(A)(2)(a) authorizes payments for these "fractional students" (i.e., part-time students), we understand that the Department of Education is not questioning whether it has authorization for this practice.

The Honorable Lisa Graham Keegan

October 17, 1996

Page 3

definition of "daily attendance" for high school or ungraded students, attendance of a pupil is not counted as full time unless, among other things, the pupil is "*actually and physically in attendance.*" A.R.S. § 15-901(A)(6)(d) (emphasis added).

The other authorized formula for the student count for a charter school is found in A.R.S. § 15-902. This formula for "student count" is based on the "*actual average daily attendance.*" *Id.* (emphasis added). See also A.R.S. § 15-901(A)(1) (defining "[a]verage daily attendance" as "*actual average daily attendance*" (emphasis added)).

Finally, the Legislature required school districts and charter schools to record both membership and attendance for each day that school is in session. A.R.S. § 15-902(I). These records are then used by the Department of Education to compute State financing after the one hundredth day that school is in session. *Id.*

In establishing the parameters for the "daily attendance" of pupils, the Legislature strictly limited payment for students enrolled at a public school who do not actually attend the public school to the homebound or hospitalized.² A.R.S. § 15-901(A)(6)(f). In this situation, because the Legislature limited payment for instruction in the home to homebound or hospitalized pupils, we are not authorized to expand the legislative authorization to students enrolled in a charter school who are schooled in the home as a result of choice rather than medical necessity. *Piper v. Bear Medical Systems, Inc.*, 180 Ariz. 170, 176, 883 P.2d 407, 413 (App. 1993) (when interpreting a statute that includes one or more items in a class, we may infer that the Legislature included all the items that it intended to include).

We have found no legal authority in Arizona law authorizing payment of State funds for the hybrid charter school plan described in your letter.³ Before such payment may be made to charter schools or other public schools for students who do not attend the school, the Legislature would have to prescribe the specific criteria for payment and the formulas for computing those payments.

² Homebound or hospitalized pupils are those who can benefit from academic instruction but have health conditions that preclude them from attending school regularly. A.R.S. § 15-901(B)(12).

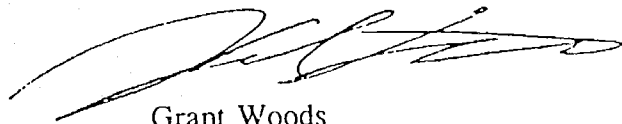
³ We understand that the California Legislature has authorized a charter school to receive State funding to operate an independent study program which may encompass home study. Cal. Education Code §§ 51745, 51747.3 (West 1989); 78 Ops. Cal. Atty. Gen. 253, 1995 WL 458911 (Cal. A.G., Aug. 2, 1995). Of course, Arizona law controls here.

The Honorable Lisa Graham Keegan
October 17, 1996
Page 4

Conclusion

The Legislature has not authorized the State to pay for students who are enrolled in, but do not attend, a charter school.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Woods", with a stylized flourish at the end.

Grant Woods
Attorney General